

MT LEGISLATIVE HISTORY

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Chapter 634 1987

Bill H. _____ S. 48

Original bill & hist. C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Mar 22 ☒ C

Hearing Date(s) Jan 15 ☒ C

_____ ☐ C

Jan 21 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Apr 08 ☒ C

Jan 22 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

Note: A Free Conference Committee
was appointed. Its minutes are
non-existent.

SENATE BILL NO. 48

INTRODUCED BY B. BROWN, ADDY, THAYER

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
ON LIABILITY ISSUES

IN THE SENATE

JANUARY 6, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 8, 1987	ON MOTION BY CHIEF SPONSOR, SENATOR THAYER AND REPRESENTATIVE ADDY ADDED AS SPONSORS.
JANUARY 23, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 24, 1987	PRINTING REPORT.
JANUARY 27, 1987	SECOND READING, DO PASS.
JANUARY 28, 1987	ENGROSSING REPORT.
JANUARY 29, 1987	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 4, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
APRIL 8, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
APRIL 10, 1987	SECOND READING, CONCURRED IN.
APRIL 11, 1987	THIRD READING, CONCURRED IN. AYES, 73; NOES, 17.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 14, 1987

ON MOTION, RULES SUSPENDED TO ALLOW
RECEIPT OF SB NO. 48.

APRIL 15, 1987

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 16, 1987

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 22, 1987

FREE CONFERENCE COMMITTEE REPORTED.

ON MOTION, RULES SUSPENDED TO PLACE
BILL ON SECOND READING THIS DAY.

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

ON MOTION, RULES SUSPENDED TO PLACE
BILL ON THIRD READING THIS DAY.

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 22, 1987

FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 23, 1987

SENT TO ENROLLING.

1 SENATE BILL NO. 48
2 INTRODUCED BY B. BROWN
3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
4 ON LIABILITY ISSUES
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
7 PERIODIC PAYMENT OF FUTURE DAMAGES IN AN ACTION FOR PERSONAL
8 INJURY, PROPERTY DAMAGE, OR WRONGFUL DEATH IF THE AMOUNT OF
9 FUTURE DAMAGES AWARDED EQUALS OR EXCEEDS \$50,000; AND
10 PROVIDING FOR A SEPARATE STATEMENT AND METHOD OF CALCULATION
11 OF ATTORNEY FEES."
12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14 Section 1. Definitions. In [sections 2 through 5]:
15 (1) "future damages" includes damages for future
16 medical treatment, care, or custody, loss of future
17 earnings, loss of bodily function, and future pain and
18 suffering of the judgment creditor; and
19 (2) "periodic payment" means the payment of money or
20 delivery of other property to the judgment creditor at
21 regular intervals.
22 Section 2. Request for periodic payment of future
23 damages. (1) A party to an action for personal injury,
24 property damage, or wrongful death in which \$50,000 or more
25 of future damages is awarded may, prior to the entry of

1 judgment, request the court to enter a judgment ordering
2 future damages to be paid in whole or in part by periodic
3 payments rather than by a lump-sum payment. Upon such
4 request, the court shall enter an order for periodic payment
5 of future damages.
6 (2) A court ordering the payment of future damages by
7 periodic payments shall make a specific finding as to the
8 dollar amount of periodic payments needed to compensate the
9 judgment creditor for future damages.
10 (3) The judgment order must specify the recipient or
11 recipients of periodic payments, the dollar amount of the
12 payments, the interval between payments, and the number of
13 payments or the period of time over which payments shall be
14 made.
15 (4) A court ordering periodic payment of future
16 damages shall order that the payments be made, during the
17 life of the judgment creditor or during the continuance of
18 the compensable injury or disability of the judgment
19 creditor, through the establishment of a trust fund or the
20 purchase of an inflation-indexed annuity.
21 (5) A court ordering periodic payments must order a
22 judgment debtor who is not an insurer licensed to do
23 business in this state to post security if payments are made
24 through a trust fund. Upon termination of periodic payments,
25 the court shall order the security returned to the judgment

1 debtor.

2 Section 3. Extension of periodic payments. If the
3 judgment creditor lives beyond the date of the final
4 periodic payment and the payments were not based on an
5 inflation-indexed annuity, the judgment creditor may apply
6 to the court for additional payments for economic damages.
7 Additional payments must be calculated at the annual rate at
8 which payments were calculated under the original order for
9 periodic payments.

10 Section 4. Payment of attorney fees. A judgment must
11 order payment of attorney fees and litigation expenses
12 separately from an order for periodic payments of future
13 damages. The attorney fees and expenses must be paid either
14 in a lump sum or by periodic payments pursuant to an
15 agreement entered into between the claimant and his
16 attorney. An agreement for the immediate lump-sum payment of
17 that portion of the attorney fees incurred to recover future
18 damages to be paid by periodic payments must be calculated
19 on the basis of the present value of the future damages.

20 Section 5. Failure to pay -- penalty. If the court
21 finds that the judgment debtor has unjustifiably exhibited a
22 continuing pattern of failing to make periodic payments, the
23 court shall find the judgment debtor in contempt of court
24 and order the judgment debtor to pay past-due payments and
25 the judgment creditor's damages caused by the failure to

1 make payments, including court costs and attorney fees.

2 Section 6. Severability. If a part of this act is
3 invalid, all valid parts that are severable from the invalid
4 part remain in effect. If a part of this act is invalid in
5 one or more of its applications, the part remains in effect
6 in all valid applications that are severable from the
7 invalid applications.

-End-

CONFERENCE COMMITTEE REPORT

Report No. 1.....

April 21, 1987

MR. SPEAKER

We, your FREE Conference Committee on

Senate Bill 48

met and considered Senate Bill 48 in its entirety

We recommend as follows:

THAT SENATE BILL NO. 48, reference copy salmon, BE AMENDED AS FOLLOWS:

1. Title, line 9.

Strike: "\$50,000"

Insert: "\$100,000"

2. Page 1, line 15.

Strike: "5"

Insert: "6"

3. Page 1, line 18.

Following: "earnings,"

Strike: "loss of bodily function,"

4. Page 1, lines 20 and 21.

Following: "money" on line 20

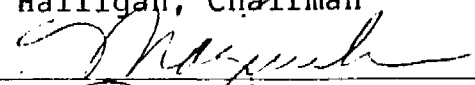
Strike: remainder of line 20 through "property" on line 21

CONTINUED

And that this Conference Committee report be adopted.

FOR THE SENATE

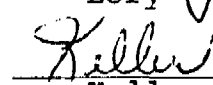

Halligan, Chairman

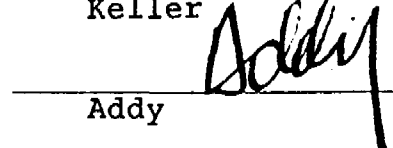

Mazurek


Crippen

FOR THE HOUSE


Lory


Keller


Addy

ADOPT REJECT

April 21,

87

19

5. Page 1, line 23.

Following: line 22

Insert: "Section 2. Findings by trier of fact - - civil actions.
In any action for personal injury, property damage, or
wrongful death where liability is found after trial and in
which \$100,000 or more in future damages is awarded to the
claimant, the trier of fact shall make a separate finding as
to the amount of any future damages so awarded and state
whether the amount of future damages has been reduced to
present value."

Renumber: subsequent sections

6. Page 1, line 25.

Strike: "\$50,000"

Insert; "\$100,000"

7. Page 2, line 9.

Strike: "THEY REPRESENT"

8. Page 2, lines 16 through 23.

Following: "CLAIMANT." on line 16

Strike: remainder of line 16 through line 23

9. Page 5, line 6.

Strike: "5"

Insert: "6"

C:\LANE\WP\AMDSB48.

HOUSE
STANDING COMMITTEE REPORT

APRIL 8, 1987

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 48

☐ do pass ☒ be concurred in ☒ as amended
☐ do not pass ☐ be not concurred in ☐ statement of intent attached

E. C. S. Long
Chairman

1. Page 1, line 15.

Strike: "7"

Insert: "5"

2. Page 2, line 7.

Following: "CLAIMANT."

Insert: "The total dollar amount of the ordered periodic payments must equal the total dollar amount of the future damages they represent without a reduction to present value."

3. Page 2, line 13.

Following: "CLAIMANT."

Insert: "The court shall make separate findings specifying the amount of:
(a) any past damages; and
(b) future damages; the period or periods over which they will accrue, on an annual basis; and the dollar amount of future damages both before and after a reduction to present value."

4. Page 2, line 23.

Strike: "the establishment of a trust fund or"

5. Page 2, line 24.

Following: "annuity"

Insert: approved by the court. The annuity must be in the form of an inflation-indexed annuity contract purchased from a qualified insurer that, in the most recent edition of A.M. Best, has an A (excellent) or higher rating and is in a class 7 or higher classification. The annuity also serves as any required supersedeas bond. Upon purchase of a court-approved annuity the court may order that the judgment is satisfied and that the judgment debtor is discharged. If the judgment creditor dies before all periodic payments have been made, the remaining payments become the property of his estate"

6. Page 2, line 25 through line 13 of page 3.

Strike: page 2, line 25 through line 13 of page 3 in their entirety

JUDICIARY COMMITTEE

AMENDMENTS TO SB #48/PAGE TWO
APRIL 8, 1987

Renumber: subsequent sections

7. Page 3, line 25.

Following: "finds that the"

Insert: "insurer that sold the annuity to the"

8. Page 4, lines 2 and 3.

Strike: "judgment debtor" on each line

Insert: "insurer" on each line

9. Page 4, line 9.

Strike: "7"

Insert: "5"

10. Page 4, line 12.

Following: "SUPPORT;"

Insert: "or"

11. Page 4, line 15.

Strike: "; OR"

Insert: "."

12. Page 4, line 16 through line 13 on page 5.

Strike: page 4, line 16 through line 13 on page 5 in their entirety

Renumber: subsequent section

SENATE BILL NO. 48

INTRODUCED BY B. BROWN, ADDY, THAYER
BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
ON LIABILITY ISSUES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE PERIODIC PAYMENT OF FUTURE DAMAGES IN AN ACTION FOR PERSONAL INJURY, PROPERTY DAMAGE, OR WRONGFUL DEATH IF THE AMOUNT OF FUTURE DAMAGES AWARDED EQUALS OR EXCEEDS \$50,000 \$100,000 AND IF PERIODIC PAYMENT IS IN THE BEST INTERESTS OF THE CLAIMANT; AND PROVIDING FOR A SEPARATE STATEMENT AND METHOD OF CALCULATION OF ATTORNEY FEES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. In [sections 2 through 5 7 5 6]:

(1) "future damages" includes damages for future medical treatment, care, or custody, loss of future earnings, ~~loss-of--bodily--function~~, and future pain and suffering of the judgment creditor; and

(2) "periodic payment" means the payment of money or ~~delivery-of-other--property~~ to the judgment creditor at regular intervals.

SECTION 2. FINDINGS BY TRIER OF FACT -- CIVIL ACTIONS.
IN ANY ACTION FOR PERSONAL INJURY, PROPERTY DAMAGE, OR

WRONGFUL DEATH WHERE LIABILITY IS FOUND AFTER TRIAL AND IN WHICH \$100,000 OR MORE IN FUTURE DAMAGES IS AWARDED TO THE CLAIMANT, THE TRIER OF FACT SHALL MAKE A SEPARATE FINDING AS TO THE AMOUNT OF ANY FUTURE DAMAGES SO AWARDED AND STATE WHETHER THE AMOUNT OF FUTURE DAMAGES HAS BEEN REDUCED TO PRESENT VALUE.

Section 3. Request for periodic payment of future damages. (1) A party to an action for personal injury, property damage, or wrongful death in which \$50,000 \$100,000 or more of future damages is awarded may, prior to the entry of judgment, request the court to enter a judgment ordering future damages to be paid in whole or in part by periodic payments rather than by a lump-sum payment. Upon such request, the court ~~shall~~ MAY enter an order for periodic payment of future damages IF THE COURT FINDS THAT SUCH PAYMENT IS IN THE BEST INTERESTS OF THE CLAIMANT. THE TOTAL DOLLAR AMOUNT OF THE ORDERED PERIODIC PAYMENTS MUST EQUAL THE TOTAL DOLLAR AMOUNT OF THE FUTURE DAMAGES THEY REPRESENT WITHOUT A REDUCTION TO PRESENT VALUE.

(2) A court ordering the payment of future damages by periodic payments shall make a specific finding FINDINGS as to the dollar amount of periodic payments needed to compensate the judgment creditor for future damages AND AS TO WHETHER AN ORDER FOR PERIODIC PAYMENT OF FUTURE DAMAGES IS IN THE BEST INTERESTS OF THE CLAIMANT. ~~THE--COURT--SHALL~~

MAKE SEPARATE FINDINGS SPECIFYING THE AMOUNT OF:(A) -- ANY PAST DAMAGES; AND(B) -- FUTURE DAMAGES;(C) -- THE PERIOD OR PERIODS OVER WHICH THEY WILL ACCRUE;ON AN ANNUAL BASIS; AND(D) -- THE DOLLAR AMOUNT OF FUTURE DAMAGES BOTH BEFORE
AND AFTER A REDUCTION TO PRESENT VALUE;

(3) The judgment order must specify the recipient or recipients of periodic payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made.

(4) A court ordering periodic payment of future damages shall order that the payments be made, during the life of the judgment creditor or during the continuance of the compensable injury or disability of the judgment creditor, through the establishment of a trust fund or the purchase of an inflation-indexed annuity APPROVED BY THE COURT. THE ANNUITY MUST BE IN THE FORM OF AN INFLATION-INDEXED ANNUITY CONTRACT PURCHASED FROM A QUALIFIED INSURER THAT, IN THE MOST RECENT EDITION OF A.M. BEST, HAS AN "A" (EXCELLENT) OR HIGHER RATING AND IS IN A CLASS 7 OR HIGHER CLASSIFICATION. THE ANNUITY ALSO SERVES AS ANY REQUIRED SUPERSEDEAS BOND. UPON PURCHASE OF A COURT-APPROVED ANNUITY, THE COURT MAY ORDER THAT THE

JUDGMENT IS SATISFIED AND THAT THE JUDGMENT DEBTOR IS DISCHARGED. IF THE JUDGMENT CREDITOR DIES BEFORE ALL PERIODIC PAYMENTS HAVE BEEN MADE, THE REMAINING PAYMENTS BECOME THE PROPERTY OF HIS ESTATE.

(5) A court ordering periodic payments must order a judgment debtor who is not an insurer licensed to do business in this state to post security if payments are made through a trust fund. Upon termination of periodic payments, the court shall order the security returned to the judgment debtor.

Section 3. Extension of periodic payments. If the judgment creditor lives beyond the date of the final periodic payment and the payments were not based on an inflation-indexed annuity, the judgment creditor may apply to the court for additional payments for economic damages. Additional payments must be calculated at the annual rate at which payments were calculated under the original order for periodic payments.

Section 4. Payment of attorney fees. A judgment must order payment of attorney fees and litigation expenses separately from an order for periodic payments of future damages. The attorney fees and expenses must be paid either in a lump sum or by periodic payments pursuant to an agreement entered into between the claimant and his attorney. An agreement for the immediate lump-sum payment of

that portion of the attorney fees incurred to recover future damages to be paid by periodic payments must be calculated on the basis of the present value of the future damages.

Section 5. Failure to pay -- penalty. If the court finds that the INSURER THAT SOLD THE ANNUITY TO THE judgment debtor has unjustifiably exhibited a continuing pattern of failing to make periodic payments, the court shall find the judgment-debtor INSURER in contempt of court and order the judgment-debtor INSURER to pay past-due payments and the judgment creditor's damages caused by the failure to make payments, including court costs and attorney fees.

SECTION 6. ASSIGNMENT OF PERIODIC INSTALLMENTS. AN ASSIGNMENT OF OR AN AGREEMENT TO ASSIGN ANY RIGHT TO PERIODIC INSTALLMENTS FOR FUTURE DAMAGES CONTAINED IN A JUDGMENT ENTERED UNDER [SECTIONS 1 THROUGH 7 5 6] IS ENFORCEABLE ONLY AS TO AMOUNTS:

(1) TO SECURE PAYMENT OF ALIMONY, MAINTENANCE, OR CHILD SUPPORT; OR

(2) FOR THE COSTS OF PRODUCTS, SERVICES, OR ACCOMMODATIONS PROVIDED OR TO BE PROVIDED BY THE ASSIGNEE FOR MEDICAL OR OTHER HEALTH CARE; OR.

(3) --FOR-ATTORNEY-FEES-AND-OTHER-EXPENSES-OF-LITIGATION INCURRED-IN-SECURING-THE-JUDGMENT;

SECTION 7. --FORM--OF--SECURITY-----SATISFACTION--OF JUDGMENTS--(1)--SECURITY-AUTHORIZED-OR-REQUIRED-FOR--PAYMENT

OF--A--JUDGMENT--FOR--PERIODIC--INSTALLMENTS--ENTERED--IN ACCORDANCE-WITH--(SECTIONS-1-THROUGH-7)-MUST--BE--IN--ONE--OR MORE-OF-THE-FOLLOWING-FORMS-AND-APPROVED-BY-THE-COURT;

(A) --A-BOND-EXECUTED-BY-A-QUALIFIED-INSURER;

(B) --AN--ANNUITY--CONTRACT--EXECUTED--BY--A--QUALIFIED INSURER;

(C) --EVIDENCE-OF-APPLICABLE-AND--COLLECTABLE--LIABILITY INSURANCE-WITH-ONE-OR-MORE-QUALIFIED-INSURERS;

(D) --AN--AGREEMENT-BY-ONE-OR-MORE-QUALIFIED-INSURERS-TO GUARANTEE-PAYMENT-OF-THE-JUDGMENT;--OR

(E) --ANY-OTHER-SATISFACTORY-FORM-OF-SECURITY;

(2) --SECURITY-COMPLYING-WITH-THIS-SECTION--SERVES--ALSO AS-ANY-REQUIRED-SUPERSEDEAS-BOND;

(3) --IF--SECURITY--IS--POSTED--EITHER-UPON-REQUEST-OF-A JUDGMENT-DEBTOR-OR-AS-REQUIRED-BY--(SECTIONS-1-THROUGH-7)-AND IS-APPROVED-UNDER-A-FINAL-JUDGMENT-ENTERED-UNDER--(SECTIONS-1-THROUGH-7)-THE-COURT-MAY,--IN-ITS-DISCRETION,--ORDER-THAT-THE JUDGMENT-IS-SATISFIED--AND--THE--JUDGMENT--DEBTOR--ON--WHOSE BEHALF-THE-SECURITY-IS-POSTED-IS-DISCHARGED;

Section 7. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

MONTANA STATE SENATE

JUDICIARY COMMITTEE

50TH LEGISLATURE

COMMITTEE MEMBERS: Senator Joe Mazurek, Chairman
 Senator Bruce Crippen, V. Chairman
 Senator Tom Beck
 Senator Al Bishop
 Senator Chet Blaylock
 Senator Bob Brown
 Senator Jack Galt
 Senator Mike Halligan
 Senator Dick Pinsoneault
 Senator Bill Yellowtail

STAFF ATTORNEY: Valencia Lane

COMMITTEE SECRETARY: Mary Huber

BOOK: 1 of 4

INCLUSIVE DATES: January 6 - January 30, 1987

SB0033 1/03
LYNCH, JOHN (J.D.)

RESTITUTION AND SERVICE TO STORE OR COMMUNITY BY SHOPLIFTERS

TABLED

Tabled 1/30
Referred back 1/16

SB0033

1/19

RESTITUTION AND SERVICE TO STORE OR COMMUNITY BY SHOPLIFTERS
COMMITTEE--(S) JUDICIARY

RUN TIME 08:32
RUN DATE 04/22/87

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY-MARY HUBER

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0040	1/05	1/12		PASS AS AMENDED	JUDICIARY	1/13
HALLIGAN, MIKE			ALLOW CRIME VICTIMS PROGRAM TO PAY FOR MENTAL HEALTH TREATMENT FOR DEPENDENT			
SB0040	1/15			PASS AS AMENDED	<i>Referred back on 1/15</i>	1/13 1/19
HALLIGAN, MIKE			ALLOW CRIME VICTIMS PROGRAM TO PAY FOR MENTAL HEALTH TREATMENT FOR DEPENDENT			
SB0041	1/03	1/09		PASS AS AMENDED		1/13
PINSONEAULT, R.J. (DICK)			RURAL PUBLIC NUISANCE EXISTS IF 3 AREA RESIDENTS COMPLAIN AND ARE AFFECTED			
SB0048	1/06	1/15		PASS AS AMENDED		1/21
BROWN, ROBERT J.			PERIODIC PAYMENT OF FUTURE DAMAGES IN CIVIL SUITS OVER \$50,000			
SB0049	1/06	1/14		PASS AS AMENDED		1/21
THAYER, GENE			IMMUNITY FOR OFFICERS, DIRECTORS, EMPLOYEES, & VOLUNTEERS OF NONPROFIT CORP.			
SB0050	1/06	1/14		ADVERSE REPORT		1/21
BROWN, ROBERT J.			REASONABLE ATTORNEY FEES TO BE PAID TO PREVAILING PARTY IN CIVIL ACTIONS			
SB0051	1/06	1/15		PASS AS AMENDED		2/12
BROWN, ROBERT J.			SUBSTITUTE "COMP. FAULT" FOR "COMP. NEGLIGENCE" & ELIMINATE JOINT LIABILITY			
SB0052	1/06	1/19		TABLED	<i>Tabled 1/30</i>	—
BROWN, ROBERT J.			ESTABLISH FLEX SYSTEM FOR REGULATION OF INSURANCE PREMIUM RATES			
SB0057	1/06	1/12		PASS AS AMENDED		1/13
HALLIGAN, MIKE			REVISING CIVIL PROCESS AND SHERIFF PROCEDURES IN CIVIL MATTERS			
SB0058	1/06	1/14		DO PASS		1/26
PINSONEAULT, R.J. (DICK)			JURY TO PICK ONE OF PROPOSED AWARDS OF PARTIES IN CIVIL ACTIONS			
SB0059	1/06	1/09		PASS AS AMENDED		1/12
GALT, JACK E.			ALLOW BANKS TO HOLD AGRICULTURAL LAND FOR 10 YEARS FOLLOWING FORECLOSURE			

CONSIDERATION OF SB 48: Senator Bob Brown, Senate District #2, introduced SB 48, which was at the request of the joint interim subcommittee on liability issues. He stated the bill will provide for periodic payment of future damages in actions for personal injury, property damage, or wrongful death if the amount of future damages awarded equals or exceeds \$50,000. He explained each section of the bill, and the bill would allow the judge to make mandatory the periodic payment concept if requested by either party and it would extend the application beyond settlements to include judgements. He closed by saying "lump sum" settlements can be costly to the plaintiff in terms of taxes; periodic payments provide the plaintiff with a guaranteed method of payment for future damages and they can be extended. He stated "lump sum" payments can be devastating to insurers.

Gary Neely, representing the Montana Medical Association, testified in favor of SB 48 (see Exhibit 6, written testimony). Mr. Neely also handed out the "Actuarial Analysis of American Medical Association; Tort Reform Proposals", by Milliman and Robertson Inc. (See Exhibit 7). He said this study sets forth the kind of savings that is attributal to this legislation. He said that from this study there would 6 percent equivalent premium dollar saving from it. He said the concept of it has been indorsed by a special committee by the American Bar Association.

Kay Foster, Deputy Mayor of Billings and Chairman of the Insurance Subcommittee of the Governor's Council on Economic Development, supported SB 48 (see Exhibit 8, written testimony).

Kathy Irigoin, State Auditor's Office, testified in support of the SB 48 because it will make insurance more availible and affordable in Montana.

Dan Hoven, Montana Municipality Insurance Authority, supported the bill because cities and towns sought insurance and could not find it and made an effort to create their self-insurance pool. He felt if cities and towns were hit with a series of major damage awards, the "insurance pool" would feel a strain on its reserves. He felt this would allow the insurance pool to enhance its economic availability. He stated with catastrophic damages most would be paid up front with this bill because it is a special damages case. He believes the judge has the discretion to shorten the periodic payments in catastrophic cases.

Jim Robischon, Montana Liability Coalition, testified in favor of the bill because it provides an alternative in tort action judgments. He felt it would work well with the comparative fault doctrine discussed in SB 51 and it would help self-insured groups get "off the ground".

Lorna Frank, Montana Farm Bureau and Moutain West Farm Bureau Mutual Insurance Company, supported SB 48 (see Exhibit 9, written testimony).

Bonnie Tippy, Alliance of American Insurers, supported SB 48 because many who get a lump sum settlement spend it quickly and do not plan for the future.

OPPONENTS: John Hoyt, representing himself, opposed the bill because it does not benefit injured people. He stated that he represented a young man who was brain damaged by an injury through no fault of his own. He said a \$500,000 payment would purchase for this young man, over his lifetime, five \$100,000 payments, but it is reduced to present worth which is only \$50,000. He stated a voluntary settlement, which embraces a structured settlement, is done now only after a tremendous amount of research on the part of any competent plaintiff's attorney. He felt no small company should be allowed to structure a catastrophic award. He believed no one knows what companies will be around in the next ten years, so we find the best that we can find now when we get a structured settlement and then we don't let the defendant "off the hook". He commented that this is the only way to be assured that a periodic payment is going to be made and with an annual increase for the cost of living. He said this doesn't say that. He stated his lawyer friends in Florida that have this legislation found that the attorneys for the defendants and plaintiffs stipulate to the court that they not be paid in periodic payments because it is catastrophic to everyone.

Tom Lewis, Montana Trial Lawyers Association, believed that the basic flaw in this legislation is it goes against the finality of judgments because it takes so long to get full pay. He said it has constitutional problems because it only applies to future damages and personal injury cases and he doesn't see how people who have damage actions arising out of personal injury be treated any different than people who have damage actions arising out of improper business actions or anything else. He felt there were not tax advantages in the bill, but insurance companies get advantages because of the premiums. He felt they don't have to pay it out so soon. He believes competent plaintiff's and defendant's counsel get those cases that need structuring, structured. He did not agree with the judge being required to structure the payments because it is only beneficial to the side that requested it before the trial. He said it won't increase availability of insurance and it is not a "Savior" for self-insurers because they might have to purchase an annuity; and how does that help a self-insurer. He commented if the district judges knew about this bill they would be here in full force because it means every personal judgment for \$50,000 has to be in existence for many years.

Zander Blewett, representing himself from Great Falls, opposed the bill because it deals with insurance limits and individuals and they can't reapply for more money from anyone. He said there are few incidence of people quickly spending lump sums, but competent counsel and courts should take care of that.

Pat Melby, State Bar of Montana, spoke against the bill, but spoke of how most of the time the State Bar is neutral in legislative "hot issues", but he felt there were major problems with this bill. He believed the Bar had no problem with the concept of a district court or jury to have the authority of periodic payments. He said this would allow a policy in every personal injury case, where there are future damages over \$50,000 where the requirement of periodic payments is made by one person. He commented not every case can use this idea, because of this and the "mandatory" concept of the bill he opposed it.

DISCUSSION ON SB 48: Senator Crippen asked if a plaintiff receives period payments, can the plaintiff at sometime assign the payments to a bank or creditor. Mr Robischon replied the funds are placed outside the plaintiff's hands with a third party, so they don't become taxable. The plaintiff doesn't receive those funds till the day of dispersement, he said. Senator Crippen questioned where in the bill can the plaintiff go back and ask for an increase in payments because of an increase in medical payments. Mr. Neely answered that section 3 on page 3 of the bill has that answer. He explained that if a judge sets five periodic payments of \$100,000 per year and if the plaintiff is still alive, he can come to the court and apply to the court for additional payments limited to economic damages. Senator Crippen asked if the regular payments did not take care of the medical bills, then what happens. Mr. Neely said this situation is not in this bill, but it would be simple to put in the bill. Senator Crippen asked that in a trust fund is there a cost of living factor built in. Mr. Neely answered yes. Senator Crippen questioned how does one protect a plaintiff in that situation. Mr. Neely responded that the court could order an inflation index annuity. Senator Crippen commented that if they had a trust fund, and they got into it and the insurance company sets up a reserve, which goes into that trust fund to make these periodic payments. He said you take the principal and assume a rate of return on the principal and that is your periodic payment or you can have the trust fund to have a diminishing amount of principal. Senator Crippen asked how is one going to protect a plaintiff more with this method if he has the funds available and they were able to determine what type of periodic plan they could enter into. Mr. Neely answered if the individual receives a lump sum, there is no limitations. He said when dealing with annuities, the court has the power to form a security to require the form of the annuity in other matters and the individual is protected because of the solvency of the insurance carrier. He felt the person is protected more under this than a voluntary settlement agreement.

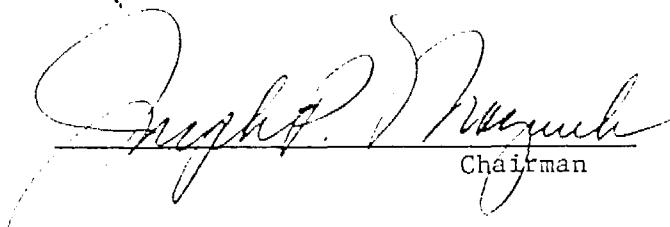
Senator Blaylock questioned could this be guaranteed to make insurance rates go down. Mr. Neely answered no. He said if one is insured by their own carrier and if he receives a savings, it has to pass on to the insured. He stated rates are made up of frequency and severity of claims, so if your claims double and the amounts paid out doubled, that can wipe out its savings. He felt there will still be a downward increase on rates.

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Judiciary Committee
Minutes of the meeting
January 15, 1987
page 11

Senator Mazurek asked about the impact of the judgment on the individual tortfeasor. Mr. Neely answered that the court can take that into account for certain cases, such as when it involves borrowing. He said it is not required unless one asks for it. Senator Mazurek asked what Mr. Neely thought of Mr. Melby's thought on "mandatory" statement in the bill. Mr. Neely answered that the mandatory feature is important to implementing this legislation because if it is not in there, it is like the law now.

Senator Brown closed by saying a proposal of a \$100,000 threshold for periodic payments was recommended by the Governor's Economic Council, so they do endorse the concept and there was broad base support here today. He stated that as far as being unconstitutional, other states who have this have not found it unconstitutional. He urged the committee's support.

The committee was adjourned at 12:15 p.m.


Chairman

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan. 15th

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

VISITORS' REGISTER

SENATE AND HOUSE COMMITTEE

JUDICIARY

BILL

SB 48

DATE 1-15-87

SPONSOR

NAME	REPRESENTING	RESIDENCE	SUPPORT	OPP
Tom Lewis	MONTANA TRIAL LAWYERS	G.F.		
Roger McGlenn	INDEPENDENT INS AGENTS ASSOC. OF MT.	HELENA	X	
Kathy Eignier	State Auditor	Helena	X	
Jim Robischon	Mont. Lib. Coalition	HELENA	X	
Kan Foster	Gov. Council on Economic Development	Billings	X	
Bob Corcoran	Boys Chamber	Boys	X	
Lerna Hande	Mont. Term Bureau	Boys	X	
Bonnie T. Tracy	Planning for Insurance	Helena	X	
Gerald J. Neely	Montana Ind. Assoc.	Billings	X	
Chip Eromann	Mont. League of Savings Inst	Helena	X	
Dan Houven	Mont. Music. Ind. Assn.	"	X	
Pat Melby	State Bar	Helena	amend	
John Maynard	Tort Claims / Admin.	Helena		
Bryan Enderle	Missoula Chamber of Com	Helena	X	
Bruce W. Moore	MSBA	Helena	X	
SPRING FISH	MT. Wild. Assn	HELENA	X	
Chuck Mendenhall	State Farm Ins Co	Bozeman	X	
Alma Hansen	MT LEAGUE OF CITIES		X	
Don Thomas	SA Bob Williams	Helena	X	
JS Hansen	MT. TECH. Council	Billings	X	
Zander Blewett	Self	G F		
ANNIE BARTOS	MMMT	HELENA	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

PERIODIC PAYMENT OF FUTURE DAMAGES

A. SUMMARY - PERIODIC PAYMENTS LEGISLATION

■ PERIODIC PAYMENT OF FUTURE DAMAGES PAID BY ANNUITY. After a jury or judge verdict awarding in excess of \$50,000 in future damages (such as medical treatment, loss of earnings, pain and suffering, etc.), the judge shall order that an inflation-indexed annuity be purchased by the insured or insurer for payment of the future damages in installments. Depending upon circumstances, the court can authorize the use of a trust fund and an appropriate bond.

■ PAYABLE UNTIL DEATH OR TERMINATION OF DISABILITY UNLESS EXTENDED BY COURT. The periodic payments would be payable until the patient's death, even if beyond the anticipated life expectancy, if an annuity be used, or upon termination of the disability involved if that be part of the court's order, whichever first occurs. If an annuity is not involved, the patient, upon expiration of the normal life expectancy, may apply to the court for additional payments of economic damages arising out of the injury. The court can authorize that payments continue if persons are dependent upon the support of a deceased.

B. INTRODUCTION

WHAT ARE "STRUCTURED PAYMENTS" OR "PERIODIC PAYMENTS"?

In states without "periodic payment" or "structured settlement" of damage legislation, unless otherwise agreed upon by the parties or ordered by the court, judgments can only be rendered as a lump-sum award.

There are advantages to periodic payments for both the claimant and the insurance carrier:

Advantages To Claimant:

1. Lifetime Payment. A basic advantage of periodic payments for claimants is the lifetime payment feature. A claimant who receives a lump sum award and proceeds to live longer than expected will not be compensated for losses that continue beyond the projected lifetime.

2. Tax-Free Receipt Of Income. Periodic payments provide a plaintiff with the opportunity for federal income tax savings that do not exist with a lump sum payment, by avoiding taxation of what would otherwise be investment income to the plaintiff.

3. Increasing Benefits. Periodic payments can provide a claimant with increasing benefits over the years, including a series of deferred lump sums and including tying payments to an index in the marketplace, such as the discount on US Treasury Bills, thus accounting for the ravages of actual inflation.

Carrier Benefits:

1. Cost Savings. The reasons for cost savings with periodic payments is in the opportunity to use alternative methods of loss financing to make periodic payments. That can provide tax advantages to a casualty insurer not available from a lump sum settlement. Because a carrier can almost always obtain better investment rates than an individual, the same sum of money can be made available to the claimant, but with cost savings to the carrier.

2. Reduction of Solvency Problems. Periodic payments can also be used by an insurer to avoid insolvency.

Lump sum awards are ill-suited to many liability cases, because awards in such cases often include payment for anticipated future medical care, lost earnings, and pain and suffering. The assumptions made may not correspond to the actual needs of the injured party.

Juries are now presented with long and highly technical arguments with respect to average life expectancy and the range of possible interest rates by which a lump sum award should be discounted in order to determine how much money needs to be paid now in order to provide a given amount over future years.

These interest rates must be balanced against another dizzying range of possible guesses about what the purchasing power of the dollar will be in the interim.

Future damages usually cover the cost of medical care and rehabilitation, loss of income or the obligation of support, and general damages for pain and suffering. Any determination by the jury has no necessary relationship to what actually will occur, and experience indicates that that is one of the major factors in large verdicts, which in turn are often routinely approved by appellate courts.

And this business of inflation adjustment, discounting the present value, and life expectancies are major components -- not only in the large awards -- but the significant dollars which must be spent on expert witnesses and lawyers in preparing the case.

Periodic payments allow damages to be paid in installment amounts, the size of which can be specified by statute, negotiated by the parties, or determined by the trial judge, depending upon the type of statute.

Periodic payments may be limited to the disability period or lifetime of the patient only or they may be limited to the patient's lifetime plus the support of persons whom the patient was legally obliged to support.

Periodic payments are less expensive to finance for the insurer than the equivalent lump-sum payment. Periodic payments allow savings to be passed on to the insured in at least a reduced rate of increase in premiums and they assure that financial resources will be available to an injured person over time as needed.

The use of periodic payments allows the insurer to not have to maintain large reserves to pay lump sum awards and reduces the cost of reinsurance or at least spreads it out over a longer period of time.

The installment approach leaves the cash involved in the judgment in a position to earn interest for the insurer during the period between the date of the judgment and the date of payment.

To the degree that this interest rate is higher than that which would have been assumed by the jury in discounting the award to its present value, the interest income offsets the effect of the judgment on the companies' assets.

Interest rate differentials can add up fast. A series of payments which would cost \$4 million in present value if discounted at 8% would cost only \$2.7 million if discounted at 5%. This is roughly a one-third reduction in the amount that would have to be paid out, but under both circumstances, the patient still receives his due.

Also, if the jury has based its judgment on a longer life expectancy than actually occurs, there is at least the freeing of the portion of assets encumbered by the defendant's need to prove responsibility. And predicting life-expectancy by a jury is error-prone.

The patient can fall far short of living out his normal life expectancy, either because of an inaccurate estimate of his natural life or as a result of unexpected accidents or illness unassociated with the claim the patient has made. The consequence is an inequitable cost to those paying for malpractice premiums -- the public -- and an unjustified windfall to the patient's heirs if they are not dependent upon the patient for their support.

Under the annuity approach, the insurance carrier buys an annuity; if the patient outlives his normal life expectancy, he would receive payments for his entire life. If all patients were covered by such annuities, any such imbalances would work themselves out over a period of time, since some patients would die before and some after their life expectancy.

Use of the annuity makes it immaterial in severe cases whether at trial or in settlement the claimant's contentions about life expectancy are exaggerated. And convoluted jury instructions on reduction to present value would no longer be necessary, as the insurer would invest the funds as it saw fit, and pay the patient what the patient is entitled to.

If the award is specified as an annuity, to be indexed to a publicly available price index such as the consumer price index, the issue of inflation and discounting is removed from the jury. Under this approach, the patient is assured the intended real future purchasing power with no windfall losses or gains.

The existence of periodic payments by statute as to all awards will induce such periodic payments in settlements.

One argument in favor of periodic payments is that plaintiffs spend lump sum awards friviously and then become wards of the state. This position implies a degree of paternalism and restriction of freedom of choice of the tort victim that is hard to defend, although that may be the motive of many states in their lotteries in requiring payments to be made over a period of time.

A better argument for periodic payments is that the approach resembles the form of disability plus life insurance policy that people choose to buy when insurance is voluntary, and thus it reduces the cost of providing malpractice insurance. This ultimately reduces the cost to the public, who pays for the malpractice premiums.

The use of periodic payments of future damages greatly facilitates the integration with other sources of compensation to prevent double recovery. For example, it becomes a simple matter to reduce collateral source payments by the amount of payments from the annuity.

WILL PROPER LEGISLATION HAVE A DOWNWARD IMPACT ON PREMIUMS OR IMPROVE THE AVAILABILITY OF INSURANCE?

An actuarial survey undertaken by an independent actuarial firm at the request of the American Medical Association indicated a total savings in premiums of 6% of the premium dollar from legislation implementing a periodic payments for future damages in excess of \$100,000. 1

A Pennsylvania study has recently estimated potential saving from periodic payments legislation to be between 7% and 14% of the premium dollar, while a New York study suggests that potential savings might be approximately 5%. 2

Without quantifying the amount, the American Bar Association concluded that there would be a noticeable impact on premiums from periodic payment legislation:

"*** Finally, one other tort law change which could have noticeable impact on premiums, if used frequently in cases involving large future damages, is the periodic payment settlement or judgment." 3

1 November 22/29, 1985. American Medical News, p. 19. AMA General Counsel's Office commission of actuarial survey by Milliman & Robertson Inc, New York. Survey: Actuarial Analysis of American Medical Association Tort Reform Proposals, September, 1985.

2 p. 15, AMA Professional Liability Report 2.

3 1977 Report Of the Commission On Medical Professional Liability. 1977, American Bar Association, pp. 55 - 58.

Danzon and Lillard tested, among other matters, the effect of periodic payments. Their findings were as follows: States which instituted periodic payments did lower awards by 30% on average. 4

WHAT IS THE POSITION OF COMPETENT AUTHORITIES ON THIS LEGISLATION?

In addition to the American Medical Association support of the use of periodic payments, the American Bar Association Commission on Medical Professional Liability recommended that legislation should be enacted in all states to permit the payment of future damages in periodic installments. 5 They concluded that periodic payment judgments constitute a generally sensible and flexible way of compensating those whose disabilities are long-term and substantial.

C. POLICY REASONS FOR LEGISLATIVE PROPOSALS

The general objectives of legislation concerning periodic payments to patients are:

- provide mutual tax benefits to both claimant and carrier
- provide a guaranteed method of payment of future damages that is reflective of what will actually occur in the patient's life, rather than on a speculative basis at an earlier time, on a basis that resembles disability plus life insurance
- allow the carrier to not have to maintain as much reserves and to reduce the amount necessary for reinsurance, thus further assuring the affordability and availability of medical malpractice insurance
- eliminate, by use of the inflation-indexed annuity, numerous complex matters that are typically presented to a jury, which then makes a speculative decision as to interest rates and life expectancy, and in the process reducing significantly the cost of attorney fees and expert witness fees at the trial stage

4 Danzon, Patricia M. and Lee A. Lillard, "Settlement Out of Court: The Disposition of Medical Malpractice Claims," Journal of Legal Studies, Vol. XII, No. 2, June, 1983, pp. 345-77. According to the Florida Medical Association "Medical Malpractice Policy Guidebook", 1985, FMA, the study's "empirical results on tort reform effects should be viewed by policy analysts with caution. First, the time span was too short for assessing more than a very short-term effect. Second the authors considered only a limited number of reforms, and certain reforms were entered in some equations and excluded from others for reasons that are unclear." p. 95.

5 American Bar Association. 1977 Report of the Commission On Medical Professional Liability, Appendix F. See the Appendix to this Report for a full report of the reasons advanced by the Commission.

D. FURTHER BACKGROUND ON TOPIC

HAVE OTHER STATES ACTED IN THE AREA OF PERIODIC PAYMENTS?

Twenty-four states have passed statutes permitting or requiring periodic payments of damages over the lifetime of the plaintiff. The statutes have been upheld in two states and overturned in two states.

Prepared by the Montana Medical Association, 2021-11th Ave., Helena, Montana 59601, G. Brian Zins, Executive Director, 406-443-4000.
--

1/87

LEGISLATIVE PROPOSALS -

PERIODIC PAYMENTS

SENATE JUDICIARY

EXHIBIT NO. 7

DATE Jan. 15, 1987

BILL NO. SB 48

Actuarial Analysis of
American Medical Association
Tort Reform Proposals

September, 1985

SENATE JUDICIARY

EXHIBIT NO. 7

DATE Jan. 15, 1987

BILL NO. SB 48

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September 11, 1985

Mr. Kirk Johnson
General Counsel
American Medical Association
535 North Dearborn
Chicago, Illinois

Dear Mr. Johnson:

We have completed our review of the potential medical professional liability cost savings related to the American Medical Association (AMA) proposed National Professional Liability Reform Act of 1985 (the Bill). This report describes our approach, our conclusions and a number of important limitations related to this type of analysis.

APPROACH

The objectives of this project were as follows:

1. To identify the potential one-time savings in medical professional liability cost attributable to the four tort reforms in the Bill. (We did not attempt to assign a value to the peer review, discipline and risk management aspects of the Bill.)
2. To identify the potential reductions in medical professional liability claim severity trend rates attributable to the Bill.

Our approach to achieving this objective included the following steps:

1. Estimate the medical professional liability premium (including self-insured costs) in the United States in 1984.
2. Estimate a range of potential savings for each of the four tort reforms in the Bill separately and combined. The bill language we evaluated is included in Appendix A.

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3. Estimate the potential impact on claim severity trend rates of the reforms in the Bill.

SUMMARY OF CONCLUSIONS

The next three sections describe the results from each of the three areas.

Estimated Premium

Table 1 below summarizes the result of our review of medical professional liability costs in the United States in 1984. Appendix B describes the sources of these estimates.

Table 1

Estimated Medical Professional Liability Premium Costs in the United States

<u>Item</u>	<u>Amount in Millions</u>
1. U.S. Direct Written Premium 1984	\$2,258
2. Joint Underwriting Associations (JUA) not included in 1	120
3. Patient compensation funds (PCF), Catastrophe funds (Cat Fund) and other "pay-as-you-go" financial mechanisms	166
4. Hospital self-insurance programs and hospital programs insured outside the United States	<u>200</u>
5. Total	\$2,744

The \$2.7 billion total somewhat underestimates the 1984 cost since we could not identify a source which would permit us to estimate the cost of all governmental self-insurance programs nor the amount of premiums paid directly to non-United States insurers.

Our experience with medical professional liability insurers, JUA's and PCF's indicates that costs have been increasing at more than 15% per year since 1984. By 1986, medical professional liability costs are therefore likely to exceed \$3.6 billion.

Potential Initial Savings

Table 2 below summarizes our estimates of the potential savings for each of the four tort reform components for a typical state.

Table 2

Potential Initial Savings from Reform Bill

<u>Item</u>	<u>Potential Savings</u> <u>("Typical" State)</u>
Periodic Payments	6%
Collateral Source Offset	8%
Limitation on Non-Economic Damages	12%
<u>Contingency Fee Limitation</u>	<u>9%</u>
Total	28%

Applied to the 1984 medical professional liability costs of \$2.7 billion, the potential initial savings is approximately \$800 million. Applied to the estimated 1986 medical professional liability costs of \$3.6 billion, the potential initial savings is approximately \$1.0 billion.

Appendix C describes the models used to develop these estimates. In addition to the cautions in the LIMITATION section below, the following should be considered:

1. To realize the potential savings it is necessary that law impact claim settlements to the same extent as court awarded claims, even though the statutory language only applies specifically to court awards. In the extreme case, if the law had no effect on settlements the value of the savings when applied only to court awards would be approximately 5%.
2. The savings will vary from state to state based on considerations which are discussed in Appendix C. Application of models to a range of state situations implies that the range of savings within which the experience of most states is likely to fall would be 23% to 33%.
3. The potential initial savings might not be fully reflected in cost reductions immediately after passage of a state law. Insurers and JUA's might be reluctant to decrease rates by the full amount of potential savings until the effectiveness of the law could be tested. PCF's generally charge premiums based on expected claim payments. For several years after passage of state law claim payments will reflect the prior law, and PCF charges will not be immediately affected. Self-insurance costs may be subject to considerations like those of insurers if the self-insurance program is fully funded or like those of PCF if the self-insurance program is not fully funded.

If the laws were applicable to claims reported on or after the effective date then it could take three to five years to realize the full initial cost savings. If laws were applicable to claim occurrences on or after the effective date then it would take two to three years longer (five to eight years) to realize the full initial cost savings.

Impact on Trends

The element of the Bill which we anticipate will have a significant effect on claim severity trends is the limitation on non-economic damages. Appendix C describes the manner in which the impact of the law on cost trends has been estimated.

We believe the reduction in trend over the 1986-1989 period for a typical state will approximate 4% per year, with most states realizing a trend savings ranging from 3% to 6%. The trend reduction in the typical state is equivalent to \$80 million per year at 1984 cost levels and \$100 million at 1986 cost levels. The annual savings will continue to increase since rising cost levels will increase the \$2.7 billion base (\$2.0 billion after the law change) and inflation will increase the potential for non-economic loss in excess of \$250,000 per claimant.

LIMITATIONS ON RESULTS

The following limitations should be considered in utilizing these results:

1. The projected potential savings rely on models which depend critically on the judgments which are applied. We believe the judgments are reasonable. Other reasonable judgments could result in significantly different results.
2. The actual savings which might result from passage of these tort reforms will depend on factors such as plaintiff behavior, attorney behavior and court interpretations which cannot be predicted in advance. Actual results may therefore differ significantly on these projections.
3. There are a number of studies underway (the GAO study for example) which are gathering statistical and non-statistical information. If such information were currently available it could significantly affect our judgments and conclusions. As part of this project we are not responsible for updating this report to reflect information which becomes available after the report is issued.

Mr. Kirk Johnson
September 11, 1985
Page 5

SENATE JUDICIARY
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DATE Jan. 15, 1987
BILL NO. SB 48

4. The Bill is currently in outline form. Actual bill language could produce results which differ from the intended results. We have relied on interpretations from AMA Counsel regarding the intentions of the bill language.

We assume that the agency responsible for administering the Bill would prepare minimum criteria which any state law would need to meet in order to become eligible for the benefits under the Bill. Appendix A comments on some elements which must be included in the actual operation of a state law in order to realize the potential savings.

We appreciate this opportunity to assist the American Medical Association on this important and challenging project.

Sincerely,

Allan Kaufman

Allan Kaufman, F.C.A.S.

AK/dmk

AMERICAN MEDICAL ASSOCIATION

DATE Jan. 15, 1987

Analysis of Tort Reform Proposals BILL NO. SB 48

Appendix A - Tort Reform Proposals

- (1) Periodic Payments - Such state liability reform shall include provisions:
- (A) that periodic payments shall be made for all future damages when such damages exceed \$100,000;
 - (B) for mandatory periodic payments of such future damages over the lifetime of the beneficiary or until the damages are fully paid, whichever comes first; and
 - (C) that if a plaintiff dies prior to full payment of damages, the party obligated to make such payment shall retain any sums not yet paid out in accordance with the payment schedule, provided, however, that the court shall have the discretion to order continued payments necessary for the support of the plaintiff's spouse or children.
- (2) Collateral Source Rule - Such state liability reform shall provide:
- (A) that in an action for damages for medical injury, the damages awarded shall be reduced by amounts paid or to be paid from all collateral sources including:
 - (i) government disability or sickness programs;
 - (ii) government or private health insurance;
 - (iii) employer wage continuation program; and
 - (iv) other sources intended to compensate the plaintiff for such medical injury.
 - (B) that the amount that the judgment is reduced shall equal the difference between the total amounts received from collateral sources and the amount directly paid by the plaintiff to secure such amounts.
- (3) Noneconomic Damages - Such state liability reform shall provide that in a judgment for medical injury not more than \$250,000 may be awarded as damages for noneconomic losses.

AMERICAN MEDICAL ASSOCIATION

Analysis of Tort Reform Proposals

Appendix A - Tort Reform Proposals

EXHIBIT NO. 7

DATE Jan. 15, 1987

BILL NO. SB 48

- (4) Contingency Fees - Such state liability reform shall provide that the attorney representing a medical injury claimant may not receive as a fee more than 33 1/3% of the first \$150,000 of damages, 25% of the next \$150,000 of damages, and 10% of the balance of any damages awarded to such claimant. The Court awarding a judgment shall be authorized to increase the permissible fee upon a petition containing evidence which in the opinion of the Court justifies additional compensation.

AMERICAN MEDICAL ASSOCIATION
Analysis of Tort Reform Proposals

SENATE JUDICIARY

EXHIBIT NO. 7

DATE Jan. 15, 19

BILL NO. SB 48

Appendix A -- Comments on Interpretation
of Reform Bill for Valuation Purposes

To realize the potential savings the Bill must be interpreted to accomplish the following:

(1) Periodic Payments:

- a. Claimant's attorney fee should be paid periodically in the same fashion as the award or settlement amount.
- b. The period of payment of future damages is estimated when the award (or settlement) is made. Amounts paid for medical costs and non-economic damages terminate at the earliest of the following two dates: (1) when the claimant dies; or (2) when the originally estimated period of payment for future damages expires.

(2) Collateral Source

- a. Government programs to which an offset applies include the following: medicare, medicaid and public assistance (with respect to services rendered prior to the award or settlement date) social security retirement and disability income, veterans benefits, workers' compensation benefits and benefits to military personnel and their dependents.
- b. Where public or private sources of medical benefits or income replacement coverage now permit the public or private source to place a lien on a professional liability award or permit subrogation against the professional liability tort feisor, the lien and subrogation rights must be superceded by the revised collateral source rule.
- c. A mechanism must be established to permit the professional liability insurer to offset the claimants future collateral source benefits under programs such as employer sponsored health insurance against amounts of damages awarded for future medical expenses without penalizing the claimant if those benefits are not available at all times in the future. One method to accomplish this objective is to permit the professional liability insurer to issue a health insurance policy which would provide coverage for gaps in benefits awarded by a court or agreed to in a settlement if collateral sources of those benefits are not available in the future.

AMERICAN MEDICAL ASSOCIATION

EXHIBIT NO. 7

DATE Jan. 15, 1987

Analysis of Tort Reform Proposals

BILL NO. SB 48

Appendix A -- Comments on Interpretation
of Reform Bill for Valuation Purposes

(3) Non-economic Damages

The \$250,000 limit is to apply to each injured patient, no matter how many health care providers are held to be negligent.

(4) Contingency Fees

- a. The contingency fee schedule applies to the amount awarded to the claimant no matter how many health care providers are held to be negligent.
- b. The contingency fee applies to the award or settlement amount after reduction for collateral source offsets.

Appendix B - Sources for Table 1

1. A.M. Best Company. Covers insurers reporting to A.M. Best. These amounts are gross of reductions for reinsurance which the insurers might purchase.
2. From JUA financial statements as follows

<u>State</u>	<u>Written Premium (Millions)</u>
Florida	4.2
Massachusetts	65.6
New Hampshire	8.0
New York	6.8
Pennsylvania	4.7
Rhode Island	11.5
South Carolina	5.2
Texas	4.0
<u>Wisconsin</u>	<u>10.4</u>
Total	120.4

3. From PCF and CAT Fund financial reports

<u>State</u>	<u>Assessments (Millions)</u>
Florida	55.0
Indiana	9.5
Kansas	15.0
Louisiana	1.0
Nebraska	0.1
New Mexico	0.9
Pennsylvania	66.2
South Carolina	1.0
<u>Wisconsin</u>	<u>17.3</u>
Total	166.0

4. Hospital self-insurance programs:

- a. Hospital professional liability costs constitute approximately 25% of total medical professional liability costs (NAIC Study).
- b. We estimate that 20% to 40% (use 30%) of hospital professional liability costs are self-insured or insured directly through non-United States insurers and thus those costs are not included in items 1 - 3 above.
- c. The total of items 1 - 3 therefore constitutes all but 7.5% of total costs (7.5% is 30% of 25%). The self-insured segment is calculated to increase the total of items 1 - 3 from 92.5% (100% - 7.5%) to 100%.

Analysis of Tort Reform Proposals

Appendix C - Description of Models

A. Limitations on Non-Economic Damages to \$250,000 per Award

1. The distribution of claim size amounts is assumed to follow a log-normal distribution.
 - a. The coefficient of variation of the distribution is assumed to equal 2.5 in all states.
 - b. A variety of average claim size amounts assuming no policy limit were tested.
 - c. For multiple defendant claims the award amounts are assumed to be distributed as the sum of highly correlated log normal distributions, each with the mean and coefficient of variations described in (a) above. (The distribution of the number of defendants is based on the 1974 - 1978 NAIC Study).
2. The non-economic damage component of the award amount is assumed to closely relate to the total award as follows:
 - a. The non-economic damage amount of the unlimited awards is closely correlated to the total award, e.g., a fixed percentage.
 - b. Award amounts for non-economic damages are assumed to equal 54% of the limited award amount at 1974-1978 closed claim cost levels. This percentage varies over time depending on the relationship between award size and typical policy limit.
 - c. Non-economic damage award amounts are assumed to be log normally distributed with a coefficient of variations of 2.5 and a mean equal to a percentage of the total award which depends on the factors described in 2.b.
3. Legal defense costs are assumed to be equal to 25% of indemnity amounts before the limitation. Legal defense costs are assumed to be unchanged by the limitations (the defense costs become a higher percentage of the reduced indemnity costs).
4. The effect of the policy limit on reducing awards and settlements is assumed to reduce non-economic damage amounts to zero before recoveries for economic loss are affected.

AMERICAN MEDICAL ASSOCIATION

Analysis of Tort Reform Proposals

Appendix C - Description of Models

SENATE JUDICIARY

EXHIBIT NO. 7

DATE Jan. 15, 19

BILL NO. SB 48

5. Since there is significant uncertainty in the actual distribution of non-economic damages by size of claim, and there is some evidence that non-economic damage compensation is a larger portion of the total cost on small claims than large claims, the savings indicated by the model described above are reduced by safety factors of 40% to produce the value shown in Table 2.
6. Claim amounts on settlements are assumed to follow the pattern of savings calculated for amounts awarded by juries.

Appendix C - Description of Models

B. Limitation on Contingency Fees

1. The claim size distribution model is the same as that described in A.1 above.
2. Claims are assumed to settle such that the plaintiff receives the same unlimited award amount with the revised contingency fee schedule as the plaintiff would have received under the old contingency fee schedule. Specifically this means the following:
 - a. For unlimited claim amounts below the policy limit, the amount paid by the insurer or self-insurer is reduced by an amount equal to the reduction in the contingency fee.
 - b. For unlimited claim amounts exceeding the policy limit by large amounts the plaintiff receives a greater net award (net of contingency fee) but the insurer pays the same amount.
 - c. For unlimited claim amounts between the levels described in 3.a and 3.b above, the insurer pays somewhat less and the plaintiff receives a somewhat greater award net of contingency fee.
3. Legal defense costs are assumed to follow the pattern described in A.3 above.
4. Claim amounts on settlements are assumed to follow the pattern of savings calculated for amounts awarded by juries.

Appendix C - Description of Models

C. Periodic Payments

1. Jury instructions commonly require the jury to consider future interest income (the time value of money), and inflation and mortality in establishing awards. If juries on the average reached conclusions which correctly considered these factors then passage of a periodic payment law might have no impact indemnity payments.

The Bill provides that periodic payments for medical and non-economic damages will be made for the shorter of the following two time periods: (1) life expectancy as determined by the jury; (2) actual time until the claimant dies. This element of the bill produces a savings (referred to below as mortality savings) compared to the present system even if juries properly considered interest, inflation, and mortality.

2. If juries do not properly consider interest, inflation and mortality then it is hypothesized that the jury errs in favor of a larger award to the plaintiff.

In at least one jurisdiction (Pennsylvania) juries are instructed to assume interest and inflation are equal and offsetting factors. This instruction biases awards upward because in the long run interest rates exceeds inflation rates.

3. Low, medium and high estimates of savings result from assuming the following:
 - a. Low savings result from assuming that juries are instructed to consider interest, inflation and mortality and that on the average the jury awards correctly reflect these variables.
 - b. High savings result from assuming that juries treat interest and inflation as offsetting factors.
 - c. Medium savings result from assuming jury results between (a) and (b).

AMERICAN MEDICAL ASSOCIATION

Analysis of Tort Reform Proposals

Appendix C - Description of Models

EXHIBIT NO. 1
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BILL NO. SB 48

4. The savings resulting from the assumption in 4a-c are calculated considering the following:
 - a. A distribution of claimants by age and degree of injury (source: NAIC 1974 - 1978 study).
 - b. The claim size model described in A.1a - A.1c.
 - c. Average limited and unlimited claim size amounts as described in A.1.
 - d. Assumptions regarding the portion of future and past damages by claimant age and degree of injury (Actual data on this subject is not available).
5. Legal defense costs are assumed to follow the pattern described in A.3.
6. Claim amounts on settlements are assumed to follow the pattern of savings calculated for amounts awarded by juries.

Analysis of Tort Reform Proposals

DATE Jan 15, 1987

BILL NO. SB 348

Appendix C - Description of ModelsD. Collateral Source Offset

1. The coverage provided by health, and long-term disability insurance to the U.S. population through employer sponsored, privately purchased and public insurance is estimated from public information sources. (Primarily the Statistical Abstract of the United States - 1985).
2. The portion of awards related to medical care and wage loss is estimated from the NAIC 1974-1978 Closed Claim study.
3. In some awards, the award amount does not fully cover the medical costs and wage loss. In these cases the collateral source offset merely recognizes the situation that already exists, and no savings is projected.
4. Legal defense costs are assumed to follow the pattern described in A.3.
5. Claim amounts on settlements are assumed to follow the pattern of savings calculated for amounts awarded by juries.

AMERICAN MEDICAL ASSOCIATION

EXHIBIT NO. 7
DATE Jan. 15, 1987
BILL NO. SB 48

Analysis of Tort Reform Proposals

Appendix C - Description of Models

E. Comments on Terminology

UNLIMITED CLAIM SIZE AMOUNT/UNLIMITED AVERAGE CLAIM SIZE

The use of claim size distributions to approximate the actual claim amounts results in predictions of claim amounts greater than those observed in practice. Reasons for the difference between theoretical distributions and actual observations include the following: (1) the amount of insurance coverage available may limit the amounts paid; (2) primary and excess insurance coverage data often cannot be combined to produce total limit data; (3) courts, particularly in the appeal process, may limit the maximum award amounts.

The theoretical claim sizes which should be observed if none of these forces operated are referred to as unlimited claim size amounts. The average size of the unlimited claim size amounts is referred to as the unlimited average claim size. The unlimited average claim size is generally larger than claim sizes observed actual experience.

LIMITED CLAIM SIZE AMOUNTS/LIMITED AVERAGE CLAIM SIZE

The observed claim size amounts and the average of limited claim size amounts are modeled using the unlimited distribution and then capping all claims at an amount referred to as the policy limit. This limitation may be the actual policy limit, if the policy limit is the major limiting force on claim amounts. The policy limit may also be interpreted as the maximum award amount sustainable in an appeal court.

AMERICAN MEDICAL ASSOCIATION

Analysis of Tort Reform Proposals

Appendix C - Description of Models

F. Combined Effect of all Reforms

1. If the effects of the various reforms were independent, the combined savings could be calculated by multiplying the complements of the individual savings.
2. For this analysis we assume that savings through the elements of the law interact and reduce the opportunity for savings in other areas. For example, reduced economic damage recoveries through application of the collateral source offset and the limit on non-economic damages reduces the percentage savings resulting from the revised contingency fee schedule (since the amount of savings depend on the size of the award). The adjustment for this interaction is a 10% reduction in the savings calculated on a multiplicative basis.
3. It is possible that the reforms will operate synergistically on the system and produce greater savings than we have projected by reducing legal defense costs, reducing the number of claims filed, etc. On the other hand, it is possible that the savings will be less than we have projected as court decisions operate in ways which we cannot forecast.

AMERICAN MEDICAL ASSOCIATION

EXHIBIT NO. 7

DATE Jan. 15, 1987

Analysis of Tort Reform Proposals BILL NO. SB 48

Appendix C - Description of Models

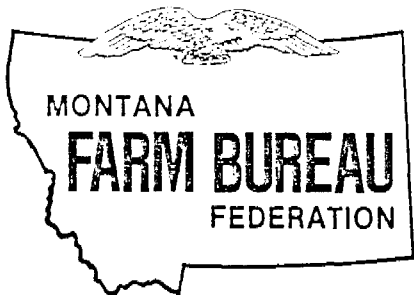
G. Impact on Trend Rates

1. The limitation on non-economic damages is the element of the law which would have the largest effect on future trend rates. The revised contingency fee schedule has a small effect on trend rates.
2. We used the models described in this Appendix, Section A (for the limitation on non-economic damages) and in Section B (for the limitation on contingency fees), to calculate differences between trend before the law and trend after the law over the 1985 - 1988 period for a variety of initial unlimited claim sizes and policy limits and a variety of trends in unlimited claim sizes and policy limits.

I am Kay Foster, Deputy Mayor of Billings and chairman of the Insurance Subcommittee of the Governor's Council on Economic Development.

On behalf of the Governor's Council I urge your support of SB48. Following nine months of study, including several day-long public hearings in Helena and Billings, the Council unanimously recommended that Montana courts be granted the authority to mandate structured damage awards. The recommendation of the Council is substantially the same as SB48. The one small difference is that our Council suggested the advisability of periodic payments in instances where damages exceed \$100,00.00 rather than the \$50,000.00 suggested by the Interim Subcommittee.

The Council feels that this allowance of periodic payment of future damages is beneficial both to plaintiffs and defendants and is one important step this legislature can make toward achieving one of the major goals of the Council...making insurance more available and affordable for Montana business and governmental entities.



P.O. Box 6400
~~602 Southern~~

Bozeman, Montana 59715
Phone (406) 587-3153

TESTIMONY BY: Lorna Frank
BILL # S.B. - 48 DATE 1/15/87
SUPPORT XXX OPPOSE

Mr. Chairman, members of the committee, for the record, my name is Lorna Frank, representing Montana Farm Bureau. *and Mountain West FARM BUREAU MUTUAL INS. CO*

Farm Bureau members believe Montana needs legislation that encourages structured settlements that disburse payments over time. Therefore we support S.B. - 48, it will set into place the option of making periodic payments rather than one lump sum.

I urge this committee to give a do pass recommendation to S.B. 48. Thank you.

SENATE JUDICIARY
EXHIBIT NO. 9
DATE Jan. 15, 1987
BILL NO. SB 48

SIGNED: Lorna Frank

NAME: Pat Melby DATE: 1-15-81

ADDRESS: 723 Gilbert

PHONE: 442-7450

REPRESENTING WHOM? State Bar of Montana

APPEARING ON WHICH PROPOSAL: SB48

DO YOU: SUPPORT? _____ AMEND? ☒ OPPOSE? _____

COMMENTS: Periodic payments should be discretionary
in the Ct after hearing and after finding that
it is in the best interests of the parties.

Mandatory periodic payments raises serious
Constitutional questions which can't be adequately
answered

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Senator Pinsoneault moved the bill AS AMENDED DO PASS. Senator Crippen protested against not having a definition of "Volunteer" in the bill because he felt law suits will be "falling out of the sky" if there is no definition. Mr. Tom Lewis stated the problem is officers, directors and volunteers are left in the bill with no compensation clause attached to any of them. He said many officers and directors get some compensation for their work. Mr. Lewis said there should be a list of circumstances that grant officers, directors, and volunteers immunity from this liability. Mr. Gary Neely, Montana Medical Association, stated that if you just state the duties of the officers, directors and volunteers for the immunity situation. Mr. Lewis commented the bill doesn't state an officer or a director is immune if he is an employee of the organization. Mr. Jim Robischon stated he would not change the present form of the bill to the proposed definition. The motion from Senator Pinsoneault AS AMENDED DO PASS carried unanimously.

Valencia Lane said she would make any technical changes in the bill. See Exhibit 4 for the final amendments.

ACTION ON SB 50: Senator Pinsoneault moved the bill DO NOT PASS because he felt it will only raise insurance rates. Senator Mazurek thought it might stop people from bringing in illegitimate claims. He stated the Trial Lawyers don't like it though. The motion carried with Senator Brown voting no.

ACTION ON SB 48: Valencia Lane gave the committee proposed amendments for SB 48 (see Exhibit 5). Mr. Gary Neely gave the committee amendments he had prepared (see Exhibit 6). He explained the amendments to the committee. He said section 6 assigns the periodic payment and section 7 defines the securities involved in the judgment settlement. Mr. Tom Lewis said the Neely amendments don't solve any problems. He felt a structured payment system should be voluntary process used and not mandatory by law. Mr. Neely said the court makes a better judge of this situation than any of us. Senator Mazurek agreed that the court system should have the power to decide if the payments are to be periodic or lump sum. Senator Crippen asked Mr. Lewis about the concept of "constructive receipt". Mr. Lewis stated that concept lets the judgment debtor off the hook. Senator Brown wanted to clarify if Valencia's proposed amendments would allow a judge to decide the best thing for a party in receiving periodic payments, if periodic payments were a request from one of the parties. The committee answered yes. He also asked if the judge has the power to decide if punitive damages can be requested in a periodic payment situation. Senator Mazurek said if the judge finds punitive damages in a liability case is in the best interest of the party, then it should be allowed. Mr. Neely commented if the payment process is voluntary before entering a courtroom, then the impact is less on the expense of insurance and the availability of insurance. Senator Brown commented that if a judge gets a reputation of giving periodic settlements

Judiciary Committee
Minutes of the meeting
January 21, 1987
page 4

to claimants, then maybe future claimants will "shop around" for judges and courts that would give them lump sums. Senator Pinsoneault moved Valencia Lane's proposed amendments 1 through 5. Senator Crippen commented that making the periodic payments optional is fine. The motion carried with Senator Brown voting no.

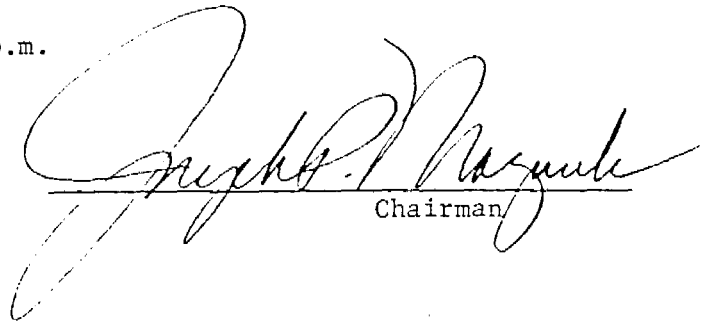
The committee discussed the Neely amendments again. Mr. Jim Robischon, Montana Liability Coalition, stated that section 7 would provide satisfying settlement judgments for judgment debtors. Senator Crippen asked if the committee were opening a new statute because judgement debtors can request posting of the securities in section 7(c). Senator Mazurek questioned the committee if they wanted the court to approve the securities. Senator Crippen made a substitute motion to insert "the court may, in its discretion, order that the judgment is satisfied" in section 7(c) of Neely's amendments. The motion carried.

The committee voted on section 7 motion, which carried.

Senator Brown moved section 6 of the Neely's amendments. The motion carried.

Senator Brown then moved the bill DO PASS AS AMENDED. The motion carried with Senator Yellowtail voting no. Exhibit 7 is the final amendments.

The committee adjourned a 12:00 p.m.


Chairman

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan. 21st 1987

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	} <u>Excused</u>		X
<u>Senator Mike Halligan</u>			X
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

PROPOSED MODIFICATIONS TO PERIODIC PAYMENTS LEGISLATION

1. INTRODUCTION. Members of the committee expressed concern about the following matters: (1) assignment of periodic payment judgments; (2) the pendency of the judgment against the individual defendant over a period of time. The suggested provisions below should eliminate those concerns.

2. SUGGESTED AMENDMENTS. As added sections, the following is suggested: (renumbering the current Section 6 to Section 8)

"Section 6. Assignment of Periodic Instalments.

An assignment of or an agreement to assign any right to periodic instalments for future damages contained in a judgment entered under this Act is enforceable only as to amounts: (1) to secure payment of alimony, maintenance, or child support; (2) for the costs of products, services, or accommodations provided or to be provided by the assignee for medical or other health care; or (3) for attorney's fees and other expenses of litigation incurred in securing the judgment."

Source: Section 13 (Alternative A), Uniform Law Commissioners' Model Periodic Payment of Judgments Act

"Section 7. Form of Security - Satisfaction of Judgments.

(a) Security authorized or required for payment of a judgment for periodic instalments entered in accordance with this Act must be in one or more of the following forms and approved by the court:

- (1) bond executed by a qualified insurer;
- (2) annuity contract executed by a qualified insurer;
- (3) evidence of applicable and collectible liability insurance with one or more qualified insurers;

(4) an agreement by one or more qualified insurers to guarantee payment of the judgment; or
(5) any other satisfactory form of security.

(b) Security complying with this section serves also as a required supersedeas bond.

(c) If security is posted upon request of a judgement debtor or where required by this Act and approved under a final judgment entered under this Act, the judgment is satisfied and the judgment debtor on whose behalf the security is posted is discharged."

Source: Section 8 and 16, Uniform Law Commissioners' Model Periodic Payment of Judgments Act

Gerald J. Neely
Special Counsel on Liability
Montana Medical Association

SB48 is amended as follows:

1. Title, line 9.

Following: "\$50,000"

Insert: "AND IF PERIODIC PAYMENT IS IN THE BEST INTERESTS OF THE CLAIMANT"

2. Page 1, line 14.

Following: "through"

Strike: "5"

Insert: "7"

3. Page 2, line 4.

Following: "court"

Strike: "shall"

Insert: "may"

4. Page 2, line 5.

Following: "damages"

Insert: "if the court finds that such payment is in the best interests of the claimant"

5. Page 2, line 7.

Following: "make"

Strike: "a"

Following: "specific"

Strike: "finding"

Insert: "findings"

6. Page 2, line 9.

Following: "damages"

Insert: "and as to whether an order for periodic payment of future damages is in the best interests of the claimant"

7. Page 4, line 2.

Insert: "Section 6. Assignment of periodic installments. An assignment of or an agreement to assign any right to periodic installments for future damages contained in a judgment entered under [sections 1 through 7] is enforceable only as to amounts:

(1) to secure payment of alimony, maintenance, or child support;

(2) for the costs of products, services, or accommodations provided or to be provided by the assignee for medical or other health care; or

(3) for attorney fees and other expenses of litigation incurred in securing the judgment."

Section 7. Form of security -- satisfaction of judgments. (1) Security authorized or required for payment of a judgment for periodic installments entered in accordance with [sections 1 through 7] must be in one or more of the following forms and approved by the court:

- (a) a bond executed by a qualified insurer;
 - (b) an annuity contract executed by a qualified insurer;
 - (c) evidence of applicable and collectable liability insurance with one or more qualified insurers;
 - (d) an agreement by one or more qualified insurers to guarantee payment of the judgment; or
 - (e) any other satisfactory form of security.
- (2) Security complying with this section serves also as any required supersedeas bond.
- (3) If security is posted either upon request of a judgment debtor or as required by [sections 1 through 7] and is approved under a final judgment entered under [sections 1 through 7], the court may, in its discretion, order that the judgment is satisfied and the judgment debtor on whose behalf the security is posted is discharged."

Renumber: subsequent section

C:\LANE\WP\AMDSB48.

STANDING COMMITTEE REPORT

SCRSB48.TXT

.....JANUARY 22,..... 19..87..

MR. PRESIDENT

Judiciary

We, your committee on.....

Senate Bill

48

having had under consideration..... No.....

first

white

reading copy (.....)

color

PERIODIC PAYMENT OF FUTURE DAMAGES IN CIVIL SUITS OVER \$50,000

Senate Bill

43

Respectfully report as follows: That..... No.....

BE AMENDED AS FOLLOWS:

1. Title, line 9.

Following: "\$50,000"

Insert: "AND IF PERIODIC PAYMENT IS IN THE BEST INTERESTS OF THE CLAIMANT"

2. Page 1, line 14.

Following: "through"

Strike: "5"

Insert: "7"

3. Page 2, line 4.

Following: "court"

Strike: "shall"

Insert: "may"

4. Page 2, line 5.

Following: "damages"

Insert: "if the court finds that such payment is in the best interests of the claimant"

5. Page 2, line 7.

Strike: "a"

Strike: "finding"

Insert: "findings"

6. Page 2, line 9.

Following: "damages"

Insert: "and as to whether an order for periodic payment of future damages is in the best interests of the claimant"

~~DO NOT PASS~~

~~DO NOT PASS~~

.....CONTINUED.....

Chairman.

7. Page 4, line 2.

Insert: "Section 6. Assignment of periodic installments. An assignment of or an agreement to assign any right to periodic installments for future damages contained in a judgment entered under [sections 1 through 7] is enforceable only as to amounts:

- (1) to secure payment of alimony, maintenance, or child support;
- (2) for the costs of products, services, or accommodations provided or to be provided by the assignee for medical or other health care; or
- (3) for attorney fees and other expenses of litigation incurred in securing the judgment.

Section 7. Form of security -- satisfaction of judgments. (1) Security authorized or required for payment of a judgment for periodic installments entered in accordance with [sections 1 through 7] must be in one or more of the following forms and approved by the court:

- (a) a bond executed by a qualified insurer;
- (b) an annuity contract executed by a qualified insurer;
- (c) evidence of applicable and collectable liability insurance with one or more qualified insurers;
- (d) an agreement by one or more qualified insurers to guarantee payment of the judgment; or
- (e) any other satisfactory form of security.

(2) Security complying with this section serves also as any required supersedeas bond.

(3) If security is posted either upon request of a judgment debtor or as required by [sections 1 through 7] and is approved under a final judgment entered under [sections 1 through 7], the court may, in its discretion, order that the judgment is satisfied and the judgment debtor on whose behalf the security is posted is discharged."

Renumber: subsequent section

AND AS AMENDED BY
DO PASS

Senator Mazurek, Chairman

JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION

1987

<u>Committee Members</u>	<u>District</u>
Rep. Earl Lory, Chairman	59
Rep. John Mercer, Vice Chairman	50
Rep. Kelly Addy	94
Rep. Dave Brown	72
Rep. Tom Bulger	37
Rep. John Cobb	42
Rep. Fritz Daily	69
Rep. Paula Darko.	2
Rep. Ralph Eudaily	60
Rep. Leo Giacometto	24
Rep. Bud Gould	61
Rep. Ed Grady	47
Rep. Tom Hannah	86
Rep. Vernon Keller	83
Rep. Al Meyers	53
Rep. Joan Miles	45
Rep. Paul Rapp-Svrcek	51
Rep. Bill Strizich	41

Secretary

Renee Podell

Staff

John McMaster

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
11		3/3/87	3/3/87					3/3/87			
20		3/12/87						3/13/87			
24		3/3/87							3/10/87		
25		3/3/87							3/10/87		
40		3/11/87						3/13/87			
48		3/15/87	tabled 3/27/87							reconsidered 4/8/87	
49		3/4/87								3/19/87	
51		3/10/87								3/20/87	
57		3/4/87	3/4/87					3/4/87			
58		3/10/87	3/11/87	tabled							
77		3/5/87	3/5/87					3/5/87			
88		3/5/87 3/11/87	3/5/87					3/5/87 3/19/87			
92 94		3/11/87 3/11/87						3/19/87 3/13/87			
96		3/11/87						3/13/87			

372, BE NOT CONCURRED IN AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED 10-6. SB 372, BE NOT CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 48: Rep. Mercer stated this bill was in a tort reform subcommittee and it was unanimously favored by the subcommittee to table the bill. He stated the subcommittee could not recommend passage in its present form. Rep. Miles moved to table the bill. A voice vote was called for and the motion CARRIED 11-4. SB 48, TABLED.

ACTION ON SENATE BILL NO. 173: Rep. Miles moved that SB 173, BE CONCURRED IN. Question was called and a roll call vote was called for. The motion FAILED on a tie vote of 9-9. Rep. Strizich moved, BE NOT CONCURRED IN. Question was called and a roll call vote was called for. The motion CARRIED 11-7. (Roll call vote attached). SB 173, BE NOT CONCURRED IN.

ACTION ON SENATE BILL NO. 275: Rep. Hannah moved that SB 275, BE CONCURRED IN. Rep. Mercer stated the bill has some technical problems. He pointed out that there is a conflict in regard to the minor's assets. The issue seems to be the concept of checking into the youth's parents assets and the youth's assets before a court can appoint an attorney. If they have sufficient assets then the court can deny them a free attorney. Rep. Mercer moved to amend by striking lines 18-20 on page 1 in their entirety and amend page 2, lines 2, 9 and 11. (See amendments attached). Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Hannah moved the bill, BE CONCURRED IN AS AMENDED. Question was called and a voice vote was taken. The motion carried 15-1 with Rep. Brown dissenting. SB 275, BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO 286: Rep. Mercer moved that SB 286, BE CONCURRED IN. He moved the amendments adopted by the subcommittee. Rep. Rapp-Svrcek made a substitute motion to amend the amendments by striking the reference to prohibiting campfires and also striking the language in regard to overnight camping by reinserting the original language of no camping within sight of a dwelling. He also stated that he does not see any problem with building a campfire within the high water mark of a stream bed. Rep. Addy spoke against the motion. He pointed out that we are not talking about camping on public lands. The language in the bill relates to camping on private land without the landowners permission. Minimal impact camping is a fine policy to adopt in this state on lands adjacent to public waters, he said. Rep. Addy further stated that he supports Rep. Mercer's amendments.

DAILY ROLL CALL
JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 27, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)		✓	✓
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

April 8, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on April 8, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Reps. Grady, Hannah, and Strizich who were excused and Rep. Cobb who was absent.

EXECUTIVE SESSION:

SENATE BILL NO 48: Rep. Mercer moved that SB 48 be taken off the table. Rep. Miles opposed the bill and the motion because she felt that the bill should have been put back into the original subcommittee. Question was called and voice vote was taken. The motion CARRIED 10-3. Discussion continued on the amendments. Rep. Miles requested that Mr. MacMaster explain Section 7 in regards to the first set of amendments had Section 7 written differently than this proposed set of amendments. Mr. MacMaster explained this section by stating that section 7 was deleted and the wording was put into amendment number 4. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Gould moved that SB 48 BE CONCURRED IN AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED 12-1 with Rep. Brown dissenting. SB 48 BE CONCURRED IN AS AMENDED.

SENATE BILL NO. 190: Rep. Gould moved that SB 190 be taken off the table. Question was called and a voice vote was taken. The motion CARRIED 13-1 with Rep. Brown dissenting. Rep. Mercer moved the amendments. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Rapp-Svrcek moved that SB 190 BE CONCURRED IN AS AMENDED. The motion CARRIED unanimously. SB 190 BE CONCURRED IN AS AMENDED.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 9:40 a.m.



EARL LORY, Chairman

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date April 8, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)		✓	
ED GRADY (R)			✓
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)			✓
TOM HANNAH (R)			✓
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		